

IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

ANDRES R. BARREIRO

Appellant,

v.

STATE OF TEXAS

Appellee.

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No. 10-MCA-3378

Ticket #: 18246909.1

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense. A fine of \$100.00 was assessed.

Appellant contends that the Trial Judge failed to offer him defensive driving or a jury trial, and that he should be entitled to rehearing of his case.

The Court's Docket Sheet, which is a part of the Record before this Court, reflects that there had been three settings of Appellant's case, and the previous two settings were to have given him an opportunity to have hired an Attorney. The Docket Sheet further reflects that Appellant waived a Trial by Jury, but there is no written waiver of such right signed by the Appellant. Article 45.025, Tex. Code Crim. Proc. states as follows:

"The accused may waive a Trial by Jury in writing. If the Defendant waives a Trial by Jury, the Justice or Judge shall hear and determine the cause without a jury."

The use of the permissive word "may" rather than the mandatory language of the word "shall" indicates to this Court that a waiver of a Jury Trial can be made by Appellant either orally or in writing.

Appellant also maintains that he was not advised of his right to take a driving safety course pursuant to Article 45.0511(p). That section provides that the Court shall advise a Defendant of their right to successfully complete a driving safety course. Also

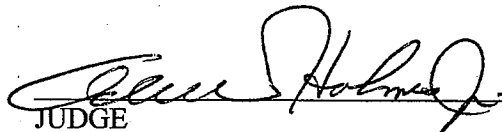
under that same Article, Subsection (q), the Notice to Appear issued to the offense must also inform the person of their right to take such a course in lieu of prosecution.

However, Article 45.0511 requires a number of conditions to determine the eligibility of a person to take such a course, the principle one being, that the person enters a plea of "no contest" or "guilty" on or before the Answer date. The Record before this Court reflects that Appellant entered a plea of "not guilty", and therefore was not eligible to take a driving safety course, and even if the Trial Court did not advise him of such right, which may have been error, it was harmless at best.

Further, the judgment of the Trial Court also reflected that the Jury Trial had been waived, and this Court held in Rancich v. State, 86-MCA-1698, that such recitation establishes a waiver of a Jury Trial. See Breazeale v. State, 683 SW 2nd 446 (Tex. Cr. App. 1984), Lopez v. State 708 SW 2nd 446 (Tex. Cr. App. 1986).

Having found no reversible error, the judgment is affirmed.

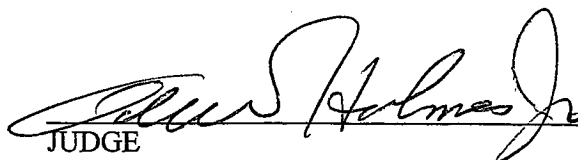
SIGNED this 10th day of June, 2010.


JUDGE

JUDGMENT

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case be affirmed.

SIGNED this 10th day of June, 2010.


JUDGE